



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

January 11, 2016

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Subject: Final Environmental Impact Statement for Hydropower Licenses, Merced River
Hydroelectric Project FERC Project No. 2179-043-California and Merced Falls
Hydroelectric Project FERC Project No. 2467-020-California, Merced and Mariposa
Counties, California [CEQ# 20150347]

Dear Ms. Bose:

The U.S. Environmental Protection Agency has reviewed the Final Environmental Impact Statement for the Hydropower Licenses for Merced River and Merced Falls. Our review and comments are pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA supports the development of renewable energy generation and recognizes the opportunity provided by the relicensing process to further protect and enhance environmental resources. We reviewed the Draft Environmental Impact Statement for the proposed action and provided comments to the Federal Energy Regulatory Commission on May 29, 2015. EPA rated the Draft EIS as Environmental Concerns – Insufficient Information (EC-2) due to our concerns regarding potential impacts to water quality and aquatic habitat. Our rating was provided based on our understanding that the mandatory license conditions from the California State Water Resources Control Board would be included in the license renewal, regardless of whether or not they were evaluated as part of the preferred alternative. FERC has selected the staff alternative as the preferred alternative, and the FEIS confirms that the Water Board's mandatory Water Quality Certification (WQC) conditions would be included in any licenses issued for the projects. We appreciate the changes to the project and additional information highlighted in FERC's response to our comment letter, specifically with regard to the proposed flow regime, gravel augmentation, and the geographic scope of the project. The remainder of this letter describes our remaining concerns and recommendations.

EPA continues to endorse an increase to the minimum pool requirements for Lake McClure, per recommendations from the National Marine Fisheries Service and the California Department of Fish and Wildlife. The Final EIS undervalues the downstream water temperature benefits of an increased minimum pool, as did the Draft EIS. FERC responded to our comment letter by indicating that it maintained the proposed 115,000 acre-feet minimum pool requirement from the Draft EIS because any increase would restrict irrigation deliveries in August. We recommend highlighting in the Record of Decision that the State Board's preliminary conditions to be incorporated into the final license include a reservation of the State Board's right to require a new value for the minimum pool requirement in Lake McClure (page E-6).

EPA appreciates the additional discussion in the Final EIS of reasonably foreseeable fish passage at Crocker-Huffman dam and how such a development would impact the project licenses. The discussion includes the following statement: “Should an appropriate administrative record be developed and provided to the Commission supporting the need for upstream anadromous fish passage at Merced Falls dam pursuant to the standard fish and wildlife license reopener article, the Commission would consider whether the benefits of this measure would be worth the associated costs.” We recommend including in the ROD a clear description of the analysis that would need to be conducted to determine whether or not fish passage at Merced Falls dam is economically practical.

In our Draft EIS comment letter, we recommended coordinating the Large Woody Debris (LWD) Plan and the Gravel Augmentation Plan with the habitat restoration planning required by the State Board conditions. The response to comments states that FERC considers the LWD and gravel plans to be “equivalent to the habitat restoration plan specified in preliminary WQC condition 8” (page G-52). The basis for this determination is unclear as the State Board’s WQC condition 8 requires “a fish passage or habitat restoration plan that will result in passage over Crocker-Huffman, McSwain Dam, and New Exchequer or *decreasing temperatures in and downstream of the Project*” (emphasis added; page E-4). We recommend that the Record of Decision clarify how FERC and the project proponents will comply with this mandatory condition, and include documentation that the State Board concurs with the equivalency determination of these plans.

In our comments on the Draft EIS, EPA recommended that the Final EIS provide an analysis of the effects of climate change on the impacts of the Merced River and Merced Falls Projects. We provided references to available resources to inform such an analysis. FERC responded to our comment by stating that it was unaware of any climate models that would predict flows to allow for informed decision-making. EPA maintains that a thorough environmental impact analysis should include a discussion of the reasonably foreseeable impacts of climate change on the environmental effects of a proposed action, as recommended by the revised draft greenhouse gas and climate change guidance released by CEQ in December 2014, whether or not models are able to predict specific flow changes. Over the course of 50 year licenses for the Merced River hydroelectric projects, climate change impacts could include changes to flow intensity and timing, changes to what constitutes a “normal” water year, and a sustained shift away from snow melt to rain that could impact water temperatures in the river.

In our Draft EIS letter, we further recommended including a commitment in the Final EIS and the ROD to allow license reopening due to climate change impacts, as well as adding a process for doing so to the Drought Management Plan (to be developed by the technical advisory committee). In its response to our comment, FERC noted that standard reopener procedures would apply to this project and declined to provide specific language related to climate change. We note that the State Board conditions for the project include reservation of the authority to modify conditions of the Board’s Clean Water Act 401 certification should future changes in climate significantly alter the baseline assumptions used to develop the conditions of the certification. EPA recommends that FERC incorporate into the licenses and ROD a climate change license reopener that would be prompted by changes to baseline conditions similar to the State Board’s mandatory condition, and incorporate monitoring for such changes into the Drought Management Plan.

The Final EIS notes that this was the first project for which the Water Board filed preliminary WQC conditions under the post-application filing activities section of the November 19, 2013 memorandum of understanding between FERC and the Water Board. In our comment letter on the Draft EIS, we recommended that the mandatory conditions be evaluated as part of the EIS. FERC analyzed some of

the mandatory conditions under an alternative separate from the staff alternative, noting that the conditions would be included in the license. As noted above, the staff alternative has been selected as the preferred alternative. For future projects, EPA recommends describing all mandatory conditions as elements of the preferred alternative, as doing so would more accurately reflect for the public the project that will receive a license.

Finally, in our Draft EIS comment letter, we requested that the Final EIS include a description of the current water delivery system for the Merced National Wildlife Refuge. EPA thanks FERC for including such a description (page 2-4). We also requested that the Final EIS describe how the license will provide for deliveries in the future. FERC responded by stating that the Merced NWR water delivery plan and its feasibility study will include these details. EPA recommends that this feasibility study and plan be incorporated by reference into the Record of Decision if available, or that the ROD provide a status of the study and plan.

We appreciate the opportunity to review and comment on this FEIS. Should you have any questions, please contact me at (415) 972-3521, or contact Jean Prijatel, the lead reviewer for the project. Jean can be reached at (415) 947-4167 or prijatel.jean@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen Martyn Goforth', written over a horizontal line.

Kathleen Martyn Goforth, Manager
Environmental Review Section

cc via email: Amber Villalobos, State Water Resources Control Board
William Foster, National Oceanic and Atmospheric Administration, West Coast Region
Steve Edmondson, National Oceanic and Atmospheric Administration, West Coast Region
John Shelton, California Department of Fish and Wildlife
Robert Hughes, California Department of Fish and Wildlife

